

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

TURNER ENTERTAINMENT NETWORKS

Employer

and

Case 10-RC-15401

**NATIONAL ASSOCIATION OF
BROADCAST EMPLOYEES AND
TECHNICIANS-CWA, AFL-CIO**

Petitioner

**REGIONAL DIRECTOR'S DECISION
AND ORDER DISMISSING PETITION**

The Employer, Turner Entertainment Networks, is a Georgia corporation with offices located in Atlanta, Georgia, where it is engaged in providing network television broadcasts. The Petitioner, National Association of Broadcast Employees and Technicians-CWA, AFL-CIO, filed a petition with the National Labor Relations Board, under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of approximately 122 employees generally referred to as broadcast operations coordinators, which include the positions of senior coordinators, coordinators, trainees, vacation relief and migration relief employees, collectively referred to herein as BOC employees or BOCs.¹ A hearing officer of the Board held a hearing and both parties made oral argument and filed briefs, which have been carefully considered.

¹ At the hearing, Petitioner amended its petition to delete shift supervisors, and the parties stipulated that shift supervisors should be excluded from any unit found to be appropriate.

The issue presented in this proceeding is the composition of the unit appropriate for bargaining. Petitioner asserts that the BOC employees work as a distinct unit, perform the same duties, work in the same location, and are under the same supervision. The Employer contends that the petitioned-for unit is a fragmentation, consisting of only 122 out of approximately 260 production employees directly involved in the production and transmission of programming for the Employer's various networks. The Employer submits the appropriate unit should include another three grouping of employees, consisting of about 138 additional personnel, employed in the positions of sales-operators (about 47 employees), log-management employees (about 67 employees), and media-management employees (about 24 employees). The Employer argues that virtually all of the four groups of employees at issue work in the same building, receive similar pay, enjoy similar working conditions, interact with each other on a daily basis, and sometimes transfer permanently from one group to another. Thus, the unit sought by Petitioner consists of approximately 122 employees, while the Employer's expanded unit would consist of approximately 260 employees. At the hearing, the Petitioner indicated that it would not proceed to an election in a unit different from its petitioned-for unit.

I have considered the evidence and arguments presented by the parties on this issue. As discussed herein, I find insufficient evidence to support the Petitioner's assertion that the BOC employees share a community of interest separate and apart from other employees involved in and contributing to the television network broadcasts. Accordingly, I do not find that the petitioned-for unit is an appropriate unit for purposes of collective bargaining.

To provide a context for my discussion of this issue, I will first provide an overview of the Employer's operations. I will then present the facts and reasoning that support my conclusions.

I. OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer is a subsidiary of Turner Broadcasting Systems, Inc., which supplies entertainment and news through its ownership of film and animation libraries, networks, and programming services. The Employer's network broadcast operations, which consists of BOC employees, sales operators, log management and media management employees, is responsible for media production and on air transmission for five networks, which include Cartoon Network/Boomerang, Cartoon Network/International, TBS Superstation, TNT, and Turner South. The purpose of network operations is to broadcast all media, including commercial, promotional and programming, on air consistent with client desires. None of the positions at issue involve on-air duties. There is no bargaining history regarding the petitioned-for unit or the unit the Employer seeks.

The work location for the employees at issue is the Employer's Techwood Street Campus in Atlanta, Georgia. BOC employees, sales operators, log management employees, and about 7 of the media management employees are located in the 1060 Building of the Campus. BOC employees work in the control room located on the first and second floors, while sales operators and log management employees work on the fourth and fifth floors of the 1060 Building. Seven non-supervisory media management employees work on the second and third floors of the 1060 Building where the Employer stores its shortform material.² The remaining media management

² Shortform material refers to media that is short in length, e.g., commercials and advertisements.

employees occupy the 1030 Building on the Campus where the Employer stores its longform material.³

Based on the Employer's organizational chart, network operations employees are aligned in either vertical or horizontal teams, with vertically aligned teams performing work for designated Networks and horizontally aligned teams performing work for all five Networks. Most of the approximately 47 vertically aligned sales operators work for TBS Superstation and TNT Networks and a few work for Cartoon Network/Boomerang. The roughly 67 vertically aligned log management employees are distributed more or less evenly in each of the five Networks noted above. The horizontal teams include the 24 media management and 122 BOC employees.

The record establishes that the four groups of employees at issue have overlapping duties. At the heart of the Employer's network operations is its system of daily logs, which are outlines specifying the order of the presentation of the programming material. Employees in the four groups participate in the preparation of the daily log used to broadcast material over the air. Media management employees provide information to log management employees to help them identify the correct version of the media that has been ordered by the Network. After the sales operators and log management employees create the daily log, the latter deliver both electronic and hard copies to BOC employees. The BOC employees then input information from the log into the computer system. The BOC employees are the last set of employees who access the logs before the airing of the programming.

³ Longform material refers to media such as feature-length movies and episodic programming. The longform materials include a library of about 170,000 tapes stored on high-density shelving with reinforced flooring. When the Employer built its new facility, the 1060 Building, it discovered that it could cut transition costs by leaving longform materials in the 1030 Building.

II. THE COMPOSITION OF THE UNIT

As noted above, Petitioner seeks an election in a unit limited to only broadcast operations coordinators (BOCs), which include the positions of senior coordinators, coordinators, trainees, vacation relief employees, and migration relief employees. Vacation relief personnel (VRPs) provide vacation coverage, and this is the entry-level position for the BOC employees. VRPs are hired and trained on the Employer's unique ProBell master control system. When a vacancy occurs in a BOC position, VRPs have already been trained in the skills necessary to work in those positions. VRPs have also moved into log management or sales operator positions, but the record does not indicate the frequency with which this occurs. Migration relief personnel (MRPs) were hired and trained to run simultaneous feeds with the existing BOC staff to avoid a break in the 24/7 programming when the broadcast operation center was relocated from the 1050 Building to the new technical facility in the 1060 Building.

Petitioner argues that the aforementioned BOC personnel, contrary to the other three employee groups that the Employer would also include in any appropriate unit, all work primarily in the control room, perform the same duties, and are under the same supervision.⁴ The Employer asserts that all four groups of employees are engaged in the common function of getting material on the air for the Employer's various networks. Consequently, the Employer contends the appropriate unit must encompass the whole of the Employer's functionally integrated broadcast production department.

It should be noted that in the television and radio industry, the Board has held that either an overall program department or separate units of (1) employees regularly and frequently appearing on the air and (2) employees who do work preliminary to broadcasts

⁴ In its post-hearing brief, for the first time, Petitioner asserts that the unit it seeks is composed of "purely technical employees." However, Petitioner offers no evidence in support of that position.

may be appropriate. Radio & Television Station WFLA, 120 NLRB 903 (1958). The Board's conclusion is based on the rationale that the functional interrelationships in program and production departments in the television and radio industry creates a substantial community of interest and renders the combined unit appropriate. See, e.g., WTAR Radio-TV Corp., 168 NLRB 976 (1967). In addition, Board precedent is well established that a certifiable bargaining unit need only be an appropriate unit, not the most appropriate unit. Overnite Transportation Co., 322 NLRB 723 (1996).

Therefore, the unit requested by Petitioner is the starting point for the unit determination. If the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit or the most comprehensive unit, the inquiry ends. If, however, it is inappropriate, the Board may scrutinize the alternative proposals of the parties and, in its discretion, it may select a unit that is different from the alternative proposals. Id. Further, an election will not be directed in a unit that is only a fragmented segment of a broader grouping of employees sharing a sufficient community of interest. National Broadcasting Company, 202 NLRB 396, 398 (1973).

Community of interest principles govern the appropriateness of a given unit. In analyzing community of interest among employee groups, the Board considers bargaining history;⁵ extent of functional integration of operations; extent of interaction and interchange among employees; similarity of skills, qualifications and work performed; extent of centralization of management and common supervision; and similarity in wages, hours, benefits and other terms and conditions of employment.

⁵ As noted above, there is no history of collective bargaining for any of the employees at issue to provide guidance with respect to their unit placement.

A. Extent of Functional Integration of Operations: Both parties agree that that there is some degree of functional integration of the network operations. However, Petitioner concedes only that there is functional integration to the "superficial extent" that the four groups of employees share a common desire to bring a quality product to air. As discussed above, the four groups of employees at issue contribute to the daily log used to broadcast media over the air.

The primary function of the sales operators is to build the commercial inventory for the daily log. They work with sales offices from around the country to gather information about what media clients would like to air to make sure that the media is delivered to the Employer's facility. They coordinate with advertising agencies and vendors to ensure that adequate advertising spots are available for each program and to ensure that the Employer receives the correct version of each commercial scheduled to appear on the air. Sales operators rely on log management employees to help place airtime orders into the computer system. They communicate directly with BOC employees to make certain that the correct commercials are put on the air. If BOC employees find any errors with the commercials, they contact the sales operators. Sales operators also communicate with media management employees to manage the shortform media.

Log management employees begin the process of developing the log by creating a shell of the log format. They are primarily responsible for setting up shows, commercials, and promotional spots on the computerized version of the daily log based on programming information obtained directly from sales operators, media management employees and BOCs. They interact with these employees to verify the accuracy of all

information on the log. These employees, along with BOCs, also make sure that the material scheduled to air complies with federal guidelines. For example, they are responsible for checking that a program, to be aired on The Cartoon Network, meets Federal Communication Commission (FCC) standards.

Media management employees are primarily responsible for managing the Employer's media library and performing quality control on incoming media. The specific job titles for these employees include the positions of media asset coordinators, media services coordinators, customer service representatives, inventory administrators, booking services coordinators, materials management coordinator, data specialists, and quality control technicians. Media management quality control technicians perform quality control checks on incoming media. Media management employees also move, store, and track inventory and maintain a media database to ensure that vendors deliver the correct material. They work with log management employees to be sure that the network airs the proper version of each program. They also deliver to and retrieve materials from BOC employees, and work with BOC employees if an issue arises about the media during the broadcast. Four media management employees work on the same floor as the BOC employees in the 1060 Building.⁶

BOC employees edit the playlist (the electronic version of the log), input media into computers, prepare media for air, and monitor the broadcast. These employees confer with log management and sales operations employees as they coordinate their efforts to air the correct scheduled broadcast. The work of BOC employees represents the last phase of the quality control process. They review media and information that sales operators, log management employees and media management employees have

⁶ For programs that air frequently, a media library is housed with BOC employees in the control room. This library was jointly inventoried and cataloged by media management and BOC employees.

already input into the network programming. As part of the monitoring process, they perform disaster recovery if something goes wrong during the on air broadcast.

B. Similarity Of Skills, Qualifications And Work Performed

Employees in all four groups are computer-literate and require acceptable communication skills. BOC employees are required to have some technical experience, but training is provided because of the unique and high tech nature of the Employer's facility. A significant similarity of skills in the production process exists between the media management quality control technicians and the BOC employees, as both perform quality control on media. The media management technicians perform quality control and data integrity checks on incoming media while the BOC employees perform quality control on all media before it airs. The quality control workstations for both groups are equipped to check audio and video levels, and include waveform monitors, vetorscopes, audiometers, and multi-channel audio speakers for checking tracks on incoming media. In performing these quality control functions, the two groups of employees use the same broadcast quality standards. As indicated above, both BOC and log management employees are responsible for checking media for compliance with federal guidelines.

C. Extent of Interaction and Interchange Among Employees

As demonstrated by the discussion above concerning the extent of functional integration, there

is some degree of interaction among employees in the four disputed groups on a daily basis.

Petitioner presented no evidence to refute testimony by Employer witnesses describing the

interaction between the four groups as a constant back and forth. For example, log

management employees and sales operators collaborate to make sure commercials that air next

to each other are not conflicting and that the format meets the requests of the clients. Media

management and log management employees communicate by telephone to make sure the

daily log contains the proper version of programs. In addition, media management employees are constantly delivering media to the BOCs or talking to log management employees about a version of media they cannot locate. The BOCs contact sales operators by telephone with questions about advertisers and consult with log management employees in person and by telephone when they observe problems with the log. If the BOC employees discover a problem with the log, they contact log management employees who may go to the control room to review and make changes to the log.

Concerning interchange, the Employer's policy is to encourage cross training within and among the four employees groups. In addition, the Employer maintains an internal job posting system that encourages transfers among all groups. There have been several permanent transfers of personnel from BOC into the other three groups of employees. Two of the current media management quality control technicians transferred from the BOC group. In addition, two media management customer service representatives are former BOC employees. Recently, two Cartoon Network BOCs transferred to the log management group. Likewise, several former media management employees are now sales operators. With respect to its assertion that there is little or no interchange, Petitioner relies on the fact that there is no evidence of transfers into BOC from log management, sales operators, or media management positions.

D. Extent Of Centralization Of Management And Supervision

Different supervisors and managers directly supervise and manage the day-to-day activities of each vertically and horizontally aligned team. However, supervisors and managers who come in contact with employees on a particular team have input into evaluations and other employment decisions affecting those employees. Performance

evaluations are based on input from a team of supervisors and managers, and vertically aligned senior directors interview candidates for both vertically and horizontally aligned teams.

E. Similarity In Salaries and Other Terms And Conditions Of Employment

The Employer broadcasts programming over the air twenty-four hours a day. Because of this 24/7-broadcast schedule, BOC employees are on a 24-hour, seven day per week schedule, working one of three eight hour shifts. Media management employees work on a 16-hour, five day per week schedule. The quality control function performed by these employees does not require a 24/7 operation because incoming media is not received on a 24/7 schedule. Rather, it is normally received well in advance of airtime so there is sufficient time to check it and, if necessary, obtain a replacement. Log management employees do not work twenty-four hours a day, but generally work shifts providing coverage from early morning until late evening and some are on call twenty-four hours a day. Sales operators do not work shifts covering twenty-four hours per day, but they work weekends on an as needed basis.

Employees in all four groups are generally hired as non-exempt employees earning between \$30,000 and \$35,000 per year. All employees are encouraged to take courses at the Employer's training facility, which offers courses on various topics including computers, leadership, interpersonal skills and estate planning. The Employer provides intense training on evaluation preparation since under its LINK program, both the management team and employees write evaluations. There was no record evidence presented concerning other fringe benefits and terms and conditions of employment.

III. LEGAL ANALYSIS AND CONCLUSIONS

Based on the foregoing, the record as a whole, and weighing all the factors considered by the Board, I find that the unit sought by Petitioner is not an appropriate unit because the BOC employees do not share among themselves community of interest that is substantially separate and distinct from other unrepresented employees in the Employer's network broadcast operations.

Thus, employees from the four groups share similar skill levels, fringe benefits, and general working conditions. Functions performed by the BOC employees are significantly integrated with the functions of sales operators, log management and media management employees. Employees in the four groups interact with each other on a daily basis as they coordinate their efforts towards the overall goal of producing and broadcasting network television programs. See, e.g. National Broadcasting Companies, Inc., supra, 202 NLRB at 397-398 (1973),⁷ WTEV-TV, Inc., 259 NLRB 1224, 1225 (1982).⁸ In addition, the Employer maintains an internal job-posting system that encourages transfers, and there have been permanent transfers from BOC into media and log management positions and several media management employees are now sales operators.

Although among the four groups, the employees have different supervisors, and there is no evidence that other production positions transfer into BOC positions, the evidence demonstrates a high degree of functional integration and frequency of contact among the

⁷ The Board held that traffic and compliance employees, who were responsible for updating the log to comply with FCC rules, were not an appropriate unit because they were only a segment of the larger program operation, and "all subdivisions of program are primarily concerned with the common goal of creating and maintaining the station's program."

⁸ The Board concluded that the petitioned-for unit of news cameramen was inappropriate where, among other factors, these employees had regular contact on assignment with other employees and similar benefits.

employees in the four groups. While the four groups of employees perform different tasks, their work is related to a common project. Contrary to Petitioner's bare assertion, there is no record evidence that BOC employees are technical employees or engineers that might warrant a finding that they would constitute an appropriate bargaining unit.⁹ Therefore, I find that the petitioned-for unit is not composed of a distinct and homogeneous group of employees with a community of interests separate from those of employees Petitioner would exclude.

As Petitioner has expressed its desire not to participate in an election in a unit other than that petitioned-for, I find it unnecessary to decide whether the unit sought by the Employer, or any alternative grouping of employees, is an appropriate unit, and I shall dismiss the petition herein.

IV. CONCLUSIONS AND FINDINGS

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹⁰

⁹ Cf. WTTV, a Division of Sarkes Tarzian, Inc., 115 NLRB 535 (1956), where the Board found a unit of engineers to be an appropriate unit where they operated the transmitters and master control board, maintained, serviced, repaired and adjusted electronic equipment, were licensed by the FCC, their pay was 25-30% higher than other employees at the station, and there was no employee interchange between the other departments and the engineering department.

¹⁰ The parties stipulated that during the past twelve months, a representative period, the Employer, from its Atlanta, Georgia, location has derived gross revenues in excess of \$100,000 and provided products and services valued in excess of \$50,000 directly to customers located outside the state of Georgia.

3. 3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer employed at the Employer's Techwood Street Campus located in Atlanta, Georgia.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The petitioned-for unit of the Employer's broadcast operations coordinators, employed in the Employer's Broadcast Operations Center located in Atlanta, Georgia, including senior coordinators, coordinators, trainees, and vacation relief and migration relief employees, and excluding all clerical employees, guards and supervisors as defined by the Act, does not constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

V. ORDER

IT IS HEREBY ORDERED that the petition filed herein in be, and hereby is, DISMISSED.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC, 20570.

This request must be received by the Board in Washington by October 1, 2003.

DATED this 17th day of September 2003, at Atlanta, Georgia.

/s/ Kenneth D. Meadows

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